

Appl. No. 10/687,130
Atty. Docket No. 9323M
Amdt. dated October 27, 2005
Reply to Office Action of July 28, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 and 4-12 are pending in the present application and stand rejected. Claims 1, 4-5, 8-10, and 12 have been rejected under 35 U.S.C. § 102. Claims 1-7, and 9-12 have been rejected under 35 U.S.C. § 103.

Rejections Under 35 USC §102 Over Gibson et al.

Claims 1, 4-5, and 8-10 have been rejected under 35 U.S.C. § 102(b) as anticipated by Gibson et al. (U.S. Patent 5,413,488). These rejections are traversed. Contrary to the assertions in the Office Action, the Gibson et al. patent does not disclose each and every feature of Claim 1 and, therefore, does not anticipate Claim 1.

Claim 1, for example, claims a first and a second three dimensional interactive aide. Per the claim, the first aide

when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration **simulating the experience of a first child** engaged in said event or activity, wherein said first child is in a first stage of development

The claim contains a similar requirement with respect to the second aide, a second child, and second stage of development.

The Office Action does not point out how the Gibson et al. patent meets these limitations. Rather, the Office Action cites to such items as a steering wheel 4, toys and books (column 4, lines 56-58) as meeting these limitations. A comparison of the claim language, and the disclosure of the patent, however, reveals that this disclosure clearly does not meet the above quoted portions of Claim 1.

For example, there is no disclosure pointed to in Gibson et al. that the steering wheel, books, or other toys **simulate** any experience of a child in a particular stage of development when such structures are used by **an adult**. These requirements and the structural implications of these requirements are positively recited in Claim 1 and must be considered during examination. The analysis in the Office Action focuses on the child

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“playing” with the Gibson et al. structure, which has nothing to do with Claim 1 – Claim 1 is about an interactive simulation for an **adult**. Specifically, Claim 1 is about an interactive simulation for an adult of a **child’s experience**. The Office Action does not address this aspect of the claim at all.

In the “Response to Arguments” section (page 7) the Office Action simply dismisses these distinctions between Claim 1 and the Gibson et al. patent because “as broadly claimed by applicants Gibson fully encompasses the claims as stated above.” Firstly, the “broad” nature of the claims is irrelevant to a proper showing of anticipation. The Patent Office is required to accord all claim language its broadest reasonable meaning as understood by those having ordinary skill in the art, considered in view of the entire patent disclosure. In re Morris, 127 F. 3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997); In re Hyatt, 211 F.3d 1367, 1373, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In the instant case, the Office Action has ignored clear limitations in the claim language which cannot be consistent with ascribing claim terms their “broadest reasonable meaning.” The well-established standard of construction does not permit dismissing requirements of the claims as “broadly claimed” in an effort to read such claims on the prior art.

The Applicants previously (in the Amendment filed July 6, 2005) pointed to portions of the specification which describe examples of the claimed three dimensional interactive aides. The Examiner is, of course, correct that it is impermissible to import limitations from the specification into the claims. However, the specification in this case demonstrates that the **claimed** interactive three dimensional aides are in fact **structures** and that the requirements of the claims (such as simulation ability discussed above) impact the **structural requirements** of these classes of devices. The specification gives some examples of structures which meet this language. It should be clear in light of the above remarks, that the structures described in Gibson et al. do not meet the structural limitations imposed by this claim language. There is no disclosure in Gibson et al. that the steering wheel, blocks, books, etc. would respond any differently to being manipulated by an adult than by a child or that such structures would provide a simulation of any experience a child in a given stage of development might encounter. The point of the citation to the specification was to contrast this lack of disclosure with examples in the specification which **do** meet the claim language – not to argue for an importation of limitation into the claims.

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The Examiner is respectfully requested to accord all of the terms of Claim 1 its their broadest reasonable construction in accordance with In re Morris and In re Hyatt. Under this standard, it is clear that as pointed out above the Gibson et al. patent does not disclose each and every feature of Claim 1. As such, the Gibson et al. patent does not anticipate Claim 1. Claims 4-5 and 8-10 all depend from Claim 1 and are not anticipated by the Gibson et al. patent for at least the reasons given above with respect to Claim 1. Consequently, the Examiner is respectfully requested to withdrawn all of the rejections under 35 U.S.C. § 102 over Gibson et al.

Rejection Under 35 USC §102 Over Stamm et al.

Claim 12 has been rejected under 35 U.S.C. § 102(e) as anticipated by Stamm et al. (US Patent Application Publication 2003/0118975). This rejections is traversed. Contrary to the assertions in the Office Action, the Stamm et al. application does not disclose each and every feature of Claim 12 and, therefore, does not anticipate Claim 12.

The Office Action asserts (pages 3-4) that Stamm et al. discloses a number of educational aides 102 which contain a number of activity items. The Office Action further asserts that such activity items relate to a specific stage of development (such as infant, baby, toddler, preschooler). Finally, the Office Action asserts that Stamm et al. teaches the educational aides are comprised of indicia which communicate the correspondence of the educational aides to the specific stage of development. Figures 5-8 of the Stamm et al. application are cited for evidence of this disclosure.

The case of anticipation outlined above suffers in two respects. Firstly, the cited disclosure of Figures 5-8 does not in fact provide evidence that the three dimensional interactive aides **themselves** are provided with common labeling, indicia or other insignia communicating their correspondence to a particular stage of child development. The cited figures merely describe activities that one could engage in using various supplies or items. This disclosure does not meet the clear language of Claim 12 which requires that the aides be labeled and that such labeling (or insignia or indicia) communicate the correspondence of the aide to a particular stage of development.

The second defect with the case of anticipation, is that even assuming all factual assertions made in the Office Action are accurate, all elements of Claim 12 have not been

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shown to be taught by the Stamm et al. application. For example, the claimed interactive aides must provide information to an adult user relating to an aspect of child development. The Office Action simply points to disclosure in Stamm et al. of a series of toys and the like with instructions for various activities and games for babies and children. This disclosure does not show the claimed interactive three dimensional educational aides which provide information to an adult user relating to an aspect of child development. Because the cited portions of the Stamm et al. disclosure do not meet all limitations of Claim 12, the rejection of Claim 12 is improper and should be withdrawn.

Rejections Under 35 USC §103(a) Over Yoon

Claims 1, 4-7, 9, and 12 have been rejected under 35 U.S.C. § 103 as being obvious over Yoon (U.S. Patent 6,168,495). These rejections are traversed. The Office Action has not made out a proper *prima facie* case of obviousness with respect to any of these claims.

The Office Action is deficient with respect to at least two of the Graham factors: determining the scope and content of the prior art, and resolving the differences between the claimed invention and the prior art.

The deficiencies with respect to determining the scope and content of Yoon as compared to the claim language are similar to those discussed above with respect to the Gibson et al. patent.

Claim 1, for example, claims a first and a second three dimensional interactive aide. Per the claim, the first aide

when used by an adult user provides directly to said user a demonstration of an event or activity, said demonstration **simulating the experience of a first child engaged in said event or activity**

The claim contains a similar requirement with respect to the second aide and a second child.

The Office Action asserts does not point out how the Yoon patent meets these limitations. Rather, the Office Action cites to such items as a learning board 11 and balls 44 as meeting these limitations.

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A comparison of the claim language, and the disclosure of the patent, however, reveals that this disclosure clearly does not meet the above quoted portions of Claim 1. In this regard, all of the discussion above with respect to Gibson et al. is equally applicable with respect to Yoon. Yoon merely discloses various toys and activities for children. These have not been shown to be claimed interactive aides which when used by an **adult simulate** the experience of a child in a particular stage of development.

Additionally, the resolution in the Office Action of even the acknowledged differences between Yoon and Claim 1 is insufficient to establish a *prima facie* case of obviousness. The Office Action on page 5 concludes that it would have been obvious to include educational aides "directed to different stage of development of children since Yoon clearly discloses that the three-dimensional interactive aides of this invention can be customized to a variety of ages and a variety of educational needs." Even if this is the case, however, this only provides motivation for providing toys, activities and the like geared toward **children** in different age groups. This is not the same as providing a series of interactive aides which **simulate to an adult** an experience of a child in a series of different stages of development, which is the invention of Claim 1.

Given the factual difference between the prior art as applied and the claim language and the failure of the prior art even when modified per the Office Action to teach or suggest all claim elements, there has been no proper *prima facie* case of obviousness with respect to Claim 1. As such, this rejection should be withdrawn. Similarly, the rejections of Claim 4-7, and 9 which depend from Claim 1 should also be withdrawn for at least the reasons discussed above with respect to Claim 1.

Claim 12 has also been rejected as obvious over the Yoon patent. The Office Action asserts on page 5 that Yoon discloses (at column 2, lines 52-60) that the three dimensional interactive educational aides are related by common labeling, indicia or other insignia. The Yoon patent does indeed disclose that the activity items can be provided with indicia relating such items as balls to other items such as learning boards. However, this disclosure does not suggest that such indicia, labeling, or insignia communicates the correspondence of the aides to a **particular** stage of child development which is the requirement of Claim 12. The Office Action makes no attempt to resolve this difference between the prior art and Claim 12 as establishing a *prima facie* case of obviousness requires. As such, this rejection should be withdrawn.

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Rejections Under 35 USC §103(a) Over Stamm et al. in view of "Broadlands Community Forums"

Claims 1, 4, and 9-11 have been rejected under 35 U.S.C. § 103 as being obvious over Stamm et al. in view of "Broadlands Community Forums." These rejections are traversed. The Office Action has not made out a proper *prima facie* case of obviousness with respect to any of these claims.

Firstly, the applicants do not concede that "Broadland Community Forums" (a printing of what appears to be a series of internet bulletin board posts) is indeed prior art. The printed pages do appear to give dates of posting which would qualify as § 102(a) art, but applicants have no way of knowing if the "posting" date corresponds to the date that such matter was hosted on the internet which would make it "published." Therefore, applicants do not concede that this information in fact has been shown to be a "printed publication" within the meaning of § 102(a) as of the filing date of the present application. Additionally, as § 102(a)/103 art, it is subject to removal under Rule 131. Applicants reserve the right to contest the prior art status of this information, but need not do so at this time, because even assuming it is in fact prior art, it is insufficient to support the rejections made. Secondly, applicants do not concede that the Broadlands Community Forums document would be considered pertinent or analogous art by one having ordinary skill in the art to which the invention of Claim 1 pertains. It is unclear whether the Office Action is relying on the statements in the posts themselves or the description of what day care "experts" do. In any event, objections to these evidence of the state of the prior art are expressly not waived, but for purposes of responding to the rejections it is assumed that this document is in fact proper analogous art. Even with this assumption, the rejections fall short for the reasons articulated below.

The rejection of Claim 1 over Stamm et al. in view of Broadlands is premised on the same basic application of the Stamm et al. patent application described above with respect to Claim 12. The Office Action on page 6 asserts that the toys and activity supplies of Stamm et al. when used by an adult user would inherent simulate the experience of a user child of the aide. This is simply not the case, the Office Action makes no showing how ball, for example, inherently simulates the experience of a child in a particular stage of development to an adult. Even granting that Broadlands properly suggest modifying Stamm et al. to divide the structure into two or more areas, the basic failure of Stamm et al. to disclose the claimed interactive three dimensional educations

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aides having all of the claimed properties (as distinguished from three dimensional educational items generally) has not been remedied. As such, the combination of the Stamm et al. patent and the Broadlands document has not been shown to make out a proper *prima facie* case of obviousness of Claim 1 or of Claims 4, and 9-11 which depend from Claim 1. Therefore, these rejections should be withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §§ 102, 103 and allow the claims. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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